

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2002.

James Jones,

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1199 is revised to read as follows:

#### § 180.1199 Lysophosphatidylethanolamine (LPE); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide lysophosphatidylethanolamine in or on all food commodities.

[FR Doc. 02-8829 Filed 4-10-02; 8:45 am]

BILLING CODE 6560-50-S

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 271

[FRL-7168-8]

#### Washington: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Washington applied to the United States Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reached a final determination that these changes to the Washington hazardous waste program satisfy all requirements needed to qualify for final authorization.

Thus, with respect to these revisions, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984.

**EFFECTIVE DATE:** Final authorization for the revisions to Washington's hazardous waste management program shall be effective at 1 p.m. on April 11, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Nina Kocourek, U.S. EPA, Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM-122, Seattle, Washington 98101, phone (206) 553-6502.

#### SUPPLEMENTARY INFORMATION:

#### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA also granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531); and on October 12, 1999, effective January 11, 2000 (64 FR 55142). On August 2, 2001, Washington submitted a final program revision application to EPA in accordance with 40 CFR 271.21 seeking authorization of changes to the State program. On

January 15, 2002, EPA published its preliminary decision announcing its intent to grant Washington final authorization for revisions to its federally authorized hazardous waste program. Further background on the tentative determination to grant authorization appears at 67 FR 1931-1937 (January 15, 2002).

#### B. What Were the Comments and Responses to EPA's Proposal?

Along with the tentative determination in EPA's proposal, EPA also announced the availability of the authorization revision application for public comment. The public comment period ended on February 14, 2002. EPA received one written comment during the public comment period. The significant issues raised by the commenter are summarized and responded to below.

The commenter asserts that the Washington Commercial Fertilizer Act, Chapter 15.54 RCW, acts to circumvent and knowingly violate the Washington Dangerous Waste Regulations, WAC 173-303. EPA reviewed the Washington Commercial Fertilizer Act, also known as the fertilizer registration act, to determine the validity of the commenter's assertion. Although implemented by the Washington Department of Agriculture, the legislative intent of the fertilizer registration act, as stated in RCW 15.54.265, is to ensure that all fertilizers in Washington meet standards for allowable metals, that fertilizer purchasers and users know about the contents of fertilizer products in Washington, that the oversight authority of the Washington Department of Ecology (Ecology) over waste-derived fertilizers be clarified, and that better information be provided to the Washington public on fertilizers, soils, and potential health effects. EPA found nothing in the fertilizer registration act, per se, to circumvent or knowingly violate the Washington Dangerous Waste regulations.

The fertilizer registration act, at RCW 15.54.270(34), defines waste-derived fertilizers as commercial fertilizers derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, excluding biosolids regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. Before the Washington Department of Agriculture can register a waste-derived fertilizer or micronutrient fertilizer, it must obtain written approval from Ecology as provided by RCW 15.54.820. For waste-derived fertilizers, Ecology must evaluate

whether the use of a proposed waste-derived fertilizer or micronutrient fertilizer in Washington is consistent with the state solid waste management act, chapter 70.95 RCW, the hazardous waste management act, chapter 70.105 RCW, and RCRA. In performing this evaluation, Ecology must apply the standards adopted by the Washington Department of Agriculture at RCW 15.54.800, which are based on specific standards for metals adapted from Canadian standards. If more stringent standards apply under chapter 173–303 WAC for the same constituents, Ecology is required to use the more stringent standards from the hazardous waste regulations. RCW 15.54.820. This assessment for purposes of fertilizer registration in the State of Washington does not preempt the independently applicable regulations for hazardous waste management in the State.

The commenter asserts that the fertilizer registration act defies the RCRA mandate to ban open dumping of solid wastes on the land. EPA regulations specifically consider the application of waste-derived products on the land and such placement is not prohibited. Rather than prohibiting its use, a waste-derived fertilizer, also known as a waste-derived product, is required to meet the same treatment standards as if the product was to be disposed in a landfill. EPA's regulations at 40 CFR part 266, subpart C, place controls on the management of hazardous wastes before such wastes are made into a fertilizer. This use of hazardous waste is a type of recycling which in EPA's regulations is referred to as "use constituting disposal." A fertilizer produced from hazardous waste is an example of a use constituting disposal. Consistent with section 1003 of RCRA, EPA encourages materials recovery and properly conducted recycling and reuse as an integral component of the RCRA cradle-to-grave waste management system. Rather than prohibiting the use of waste-derived fertilizers, EPA promulgated regulations to require that hazardous wastes that are going to be made into fertilizers be managed in accordance with all applicable hazardous waste management requirements until the wastes are made into a fertilizer. Washington adopted these "use constituting disposal" rules, 40 CFR 266.20, 266.21 and 266.22, as WAC 173–303–505(1)(a) and (b). The hazardous waste program in Washington is authorized for these rules. Under the federal RCRA and state authorized rules, a generator of a hazardous waste that is going to be

made into a fertilizer is required to comply with the RCRA generator requirements, including manifesting off-site shipments of the wastes. The owners and operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not themselves the ultimate users of the materials, are regulated under all applicable provisions of 40 CFR parts 264 and 265, 268 and parts 270 and 124 and all corresponding federally authorized state analogs. A RCRA permit is generally required for storage of these wastes by fertilizer manufacturers.

Because the use of waste-derived products on the land is also a type of land disposal, EPA requires that all waste-derived products (except for K061 derived fertilizers<sup>1</sup>) meet the applicable LDR treatment standards prior to the land disposal of such wastes. This includes meeting the "Phase IV" (May 26, 1998, 63 FR 28556) treatment standards. Under EPA's regulations, manufacturers of waste derived fertilizers must provide notice and certify compliance with LDR standards, 40 CFR 268.7, and notify the authorized agency (EPA or the authorized state agency implementing the authorized hazardous waste program) of each shipment of product made from recycled hazardous waste. 40 CFR 268.7(b)(6).

The commenter asserts that the Washington authorized hazardous waste program is not implementing the requirements of the RCRA regulations at 40 CFR part 266, subpart C because Washington is not implementing the Phase IV LDR regulations. Washington's authorized hazardous waste program does not currently include the Phase IV LDR standards. Today's final rule will authorize the Phase IV LDR standards adopted by Washington in chapter 173–303 WAC. As a matter of state law, Washington has been implementing its State Phase IV LDR standards since the effective date of the State law. The Phase IV standards which EPA promulgated as HSWA regulations are implemented directly by EPA in States with authorized hazardous waste programs, such as Washington, until the State regulations are authorized by EPA. For purposes of federal RCRA, the LDR standards that must be complied with include the Phase IV standards and include LDR treatment standards for all

constituents subject to treatment before disposal on the land.

The commenter asserts that Ecology is reviewing the use of waste-derived fertilizers against the Phase III LDR standards rather than the Phase IV standards. However, as was discussed earlier, in assessing waste-derived fertilizers for purposes of fertilizer registration in the State of Washington, Ecology is required to use the more stringent standards that apply under chapter 173–303 WAC for the constituents addressed by the standards adopted by the Washington Department of Agriculture in RCW 15.54.800. For purposes of hazardous waste management, the fertilizer registration act does not preempt the applicability of the LDR standards, including the more stringent Phase IV LDR standards.

The commenter asserts that the fertilizer registration act limits Washington's review of waste-derived fertilizers to nine metals, enhances the probability of dilution of hazardous waste by registering the fertilizer as a whole product rather than looking at each recyclable material, and fails to test total chromium or address total metals. The fertilizer registration act requires that the Washington Department of Agriculture obtain written approval from Ecology before the Department of Agriculture can register a waste-derived fertilizer or micronutrient fertilizer in Washington. (RCW 15.54.800). Ecology assesses whether or not to provide written approval for registration to the Department of Agriculture based on the screening criteria in the fertilizer registration act and based on applicable hazardous waste regulations. The Washington legislature clearly intended that the regulation of waste-derived fertilizer be under the domain of Ecology rather than the Department of Agriculture. Notwithstanding the nine-metal screening criteria found in the fertilizer registration act, the LDR regulations in the Washington Dangerous Waste regulations are applicable independently of the fertilizer registration act. Under current EPA regulations, manufacturers of fertilizers made from recycled hazardous wastes are required to comply with applicable LDR treatment standards for the hazardous wastes which they contain before the fertilizer may be used (40 CFR 268.40) and a notice of each shipment of each fertilizer product must be submitted to the authorized agency (EPA before the State is authorized and the authorized State afterwards) (40 CFR 268.7(b)(6)). These treatment standards must be met for characteristic hazardous wastes even if the product does not exhibit a

<sup>1</sup> EPA has proposed to remove the regulatory provision which currently exempts fertilizer made from K061 from having to meet applicable LDR standards in EPA's proposed rule "Requirements for Zinc Fertilizers Made from Recycled Hazardous Secondary Materials," dated November 28, 2000. 65 FR 70958.

hazardous waste characteristic. The LDR standards set limits for certain metals in hazardous wastes before the waste or waste product can be applied to the land.

### C. What Decisions Have We Made in This Rule?

EPA has made a final determination that Washington's application for authorization of the revisions to the Washington authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, with respect to the revisions, we are granting Washington final authorization to operate its hazardous waste program as described in the revision authorization application. Washington's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements are not part of this final authorization decision. Washington's authorized program does not extend to Indian country, except that Washington does have jurisdiction over non-trust lands within the 1873 Survey Area of the Puyallup Reservation as defined in the Settlement Agreement between the Puyallup Tribe, Federal, State and local governments dated August 27, 1988. Within the 1873 Survey Area of the Puyallup Reservation, EPA retains

jurisdiction and authority to implement RCRA over Indian country and over trust lands, Indians and Indian activities.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implementable by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Washington, including issuing permits, until the State is granted authorization to do so.

### D. What Will Be the Effect of Today's Action?

A facility in Washington subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirements, such as, for example, the federal HSWA provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Washington has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements

that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and

- Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Washington's program are being authorized are already effective under State law.

### E. What Rules Are We Authorizing With Today's Action?

EPA is granting final authorization for the revisions to Washington's federally authorized program described in Washington's final complete program revision application, submitted to EPA on August 2, 2001, and deemed complete by EPA on September 19, 2001. We have made a final determination that Washington's hazardous waste program revisions, as described in this rule, satisfy the requirements necessary for final authorization. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements are not authorized.

The following table (Table 1) identifies equivalent and more stringent analogues to the Federal regulations for those regulatory revisions Washington requested authorization for. All of the referenced analogous state authorities were legally adopted and effective as of June 10, 2000.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS <sup>1</sup>

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
17P <sup>2</sup> .....	Interim Status .....	50 FR 28702, 7/15/85 .....	803(1), 803(2); 806(2)(a) 806(2)(b); 806(8); 803(2)(a), 803(2)(b); 810(11)(c), 810(11)(e); 805(1)(b), 805(1)(c), 805(8)(f)(i), 805(8)(f)(ii), 805(8)(g), 805(8)(h), 805(8)(i), 805(8)(j).
144 .....	Removal of Legally Obsolete Rules.	60 FR 33912, 06/29/95 .....	803(2)(b), 803(4)(b), 803(5)(a)(i), 803(5)(a)(i)(A), 803(5)(a)(i)(B), 803(5)(a)(i)(C).
148 <sup>2</sup> .....	RCRA Expanded Public Participation.	60 FR 63417, 12/11/95 .....	281(4) and 281(4)(a), 281(4)(b), 281(4)(c), 281(4)(d), 281(4)(d)(i), 281(4)(d)(i)(A), 281(4)(d)(i)(B), 281(4)(d)(i)(C), 281(4)(d)(i)(D), 281(4)(d)(ii), 281(4)(d)(ii)(A), 281(4)(d)(ii)(B), 281(4)(d)(ii)(C), 281(4)(d)(ii)(D), 281(4)(d)(ii)(E); 281(5), 281(5)(a), 281(5)(b), 281(5)(b)(i), 281(5)(b)(ii), 281(5)(b)(ii)(A), 281(5)(b)(ii)(B), 281(5)(b)(ii)(C), 281(5)(b)(ii)(D), 281(5)(b)(ii)(E), 281(5)(b)(ii)(F), 281(5)(b)(iii), 281(6) and 281(6)(a), 281(6)(b), 281(6)(c), 281(6)(d), 281(6)(e), 281(6)(f); 040; 806(4)(a)(xxv); 810(16); 804(6)(a); 807(6), 807(6)(a), 807(6)(b), 807(6)(b)(i), 807(6)(b)(ii), 807(6)(b)(iii), 807(6)(b)(iv), 807(7), 807(8)–(11), 807(14).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS <sup>1</sup>—Continued

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
151 .....	Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	61 FR 15566, 04/08/96; 61 FR 15660, 04/08/96; 61 FR 19117, 04/30/96; 61 FR 33680, 06/28/96; 61 FR 36421, 07/10/96; 61 FR 43924, 08/26/96; 62 FR 7502, 02/19/97.	140 (2)(a).
153 .....	Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D.	61 FR 34252, 07/01/96 .....	070(8)(b), 070(8)(b)(iii), 070(8)(b)(iii)(A), 070(8)(b)(iii)(B), 070(8)(b)(iii)(E), 070(8)(b)(iii)(F), 070(8)(b)(iii)(D), 070(8)(b)(iii)(H).
154 <sup>2</sup> .....	Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: (Includes CC and the 300 hour BB exemption).	59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426; 09/29/95; 60 FR 56952; 11/13/95; 61 FR 4903, 02/09/96; 61 FR 28508; 06/05/96; 61 FR 59932; 11/25/96.	692(3); 110(3)(g)(ix), 110(3)(g)(x); 120(4)(d), 120(4)(e); 200(1)(b)(i), 200(1)(b)(ii); 201(e); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f), 390(3)(d); 630(11); 640(11); 650(12); 680(2); 690(1)(b), 690(1)(b)(i), 690(1)(b)(ii), 690(1)(b)(iii), 690(1)(c), 690(2); 691(1)(b), 691(1)(b)(i), 691(1)(b)(ii), 691(1)(b)(iii), 691(1)(f), 691(note at end of (1), 691(2); 692(1)(a), 692(1)(b), 692(1)(b)(i), 692(1)(b)(ii), 692(1)(b)(iii), 692(1)(b)(iv), 692(1)(b)(v), 692(1)(b)(vi), 692(1)(b)(vii), 692(1)(b)(viii), 692(1)(c), 692(1)(d), 692(1)(d)(i), 692(1)(d)(ii), 692(1)(d)(iii); 692(2); 400(2)(a); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f); 390(3)(d); 400(3)(a); 810(8)(a)(ii), 810(8)(a)(iii), 810(8)(a)(iv); 806(4)(a)(v), 806(4)(b)(vi), 806(4)(c)(xiii), 806(4)(d)(xi), 806(4)(m).
156 <sup>2</sup> .....	Military Munitions Rule Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.	62 FR 6622, 02/12/97 .....	040; 016(3)(b)(iii), 016(3)(b)(iv); 170(5); 180(6); 240(10); 600(3)(p), 600(3)(p)(i)(D), 600(3)(p)(iv), 600(3)(q); 693(l), 693(2)(a), 693(2)(a)(i), 693(2)(a)(ii), 693(2)(a)(iii), 693(2)(a)(iv), 693(2)(a)(v), 693(2)(b), 693(2)(b)(i), 693(2)(b)(i)(A), 693(2)(b)(i)(B), 693(2)(b)(i)(B)(I)–(III), 693(2)(b)(i)(C), 693(2)(b)(ii), 693(2)(b)(iii), 693(2)(c), 693(2)(d), 693(2)(e), 693(2)(f); 693(3)(a), 693(3)(b); 400(2)(c)(xiii)(A)(IV), 400(2)(c)(xiii)(D), 400(2)(c)(xii), 400(3)(b); 400(3)(c)(xii); 578(1)(a), 578(1)(b), 578(2)(a), 578(2)(a)(i), 578(2)(a)(i)(A), 578(2)(a)(i)(B), 578(2)(a)(i)(C), 578(2)(a)(ii), 578(2)(b), 578(2)(b)(i), 578(2)(b)(ii), 578(2)(b)(iii), 578(2)(b)(iv), 578(2)(c), 578(2)(c)(i), 578(2)(c)(ii), 578(2)(d), 578(3), 578(4)(a), 578(4)(a)(i), 578(4)(a)(i)(A), 578(4)(a)(i)(B), 578(4)(a)(i)(C), 578(4)(a)(i)(D), 578(4)(a)(i)(E), 578(4)(a)(i)(F), 578(4)(a)(i)(G), 578(4)(a)(ii), 578(4)(a)(iii), 578(4)(b), 578(4)(c); 578(5); 800(7)(c)(i)(D), 800(7)(c)(i)(E); 830(4)(h), 830(4)(h)(i), 830(4)(h)(ii), 830(4)(h)(iii), 830(4)(i).
157 .....	Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.	62 FR 25998, 05/12/97 .....	040; 016(2)(l), 016(2)(m), 016(2)(n), 016(2)(o); 016(5) Table 1; 071(3)(ff), 071(3)(gg), 071(3)(gg)(i), 071(3)(gg)(ii); 120(2)(a)(iv); 140(2)(a).
158 .....	Testing Monitoring Activities Amendment III.	62 FR 32452, 06/13/97 .....	110(1); 110(3)(h)(v), 110(3)(h)(vi), 110(3)(g)(i), 110(3)(g)(ii), 110(3)(g)(iii), 110(3)(g)(iv), 110(3)(g)(v), 110(3)(g)(vi), 110(3)(g)(viii), 110(3)(h)(i), 110(3)(a), 110(3)(h)(ii), 110(3)(h)(iii), 110(3)(h)(vii), 110(3)(g)(x); 690(2); 691(2); 645(4)(a); 400(3)(a).
162 .....	Clarification of Standards for Hazardous Waste LDR Treatment Variances.	62 FR 64504, 12/05/97 .....	140 (2)(a).
163 .....	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment: (AA, BB, CC).	62 FR 64636, 12/08/97 .....	320(2)(c); 380(1)(f); 690(1)(b)(iii), 690(1)(c), 690(1)(d); 690(2); 691(1)(b)(iii), 691(1)(c), 691(1)(f), 691(2); 692(1)(b)(i), 692(1)(c), 692(2); 320(2)(c); 400(3)(a); 806(4)(a)(v).
164 .....	Kraft Mill Steam Stripper Condensate Exclusion.	62 FR 18504, 04/15/98 .....	071(3)(mm).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS <sup>1</sup>—Continued

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
167A .....	Land Disposal Restriction Phase IV —Treatment Standards for Metal Wastes and Mineral Processing Wastes.	63 FR 28556, 05/26/98 .....	140(2)(a).
167B .....	Land Disposal Restriction Phase IV —Hazardous Soils Treatment Standards and Exclusions.	63 FR 28556, 05/28/98 .....	140(2)(a).
167C .....	Land Disposal Restrictions Phase IV—Corrections.	63 FR 28556, 05/26/98 .....	140(2)(a).
167F .....	Exclusion of Recycled Wood Preserving Wastewater.	63 FR 28556, 05/26/98 .....	071(3)(w)(iii), 071(3)(w)(iii)(A), 071(3)(w)(iii)(B), 071(3)(w)(iii)(C), 071(3)(w)(iii)(D), 071(3)(w)(iii)(E).
169 <sup>2</sup> .....	Petroleum Refining Process Wastes.	63 FR 42110, 08/06/98 .....	071(3)(p), 071(3)(jj); 071(3)(cc)(i), 071(3)(cc)(ii), 071(3)(hh), 071(3)(hh)(i), 071(3)(hh)(ii), 071(3)(ii); 016(5)(d)(ii); 120(2)(a)(viii)(c); 9904; 082(4); 140(2)(a).
170 .....	Land Disposal Restrictions Phase IV—Zinc Micro nutrient Fertilizers, Amendment.	63 FR 46332, 08/31/98 .....	140(2)(a).
171 .....	Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from carbamate Production.	63 FR 47410, 09/04/98 .....	140(2)(a).
172 .....	Land Disposal Restriction Phase IV —Extension of Compliance Date for Characteristic Slags.	63 FR 48124, 09/09/98 .....	140(2)(a).
173 .....	Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088); Final Rule.	63 FR 51254, 09/24/98 .....	140(2)(a).
174 <sup>3</sup> .....	Post Closure Permit Requirement and Closure Process: Requirements for alternative groundwater monitoring requirements for regulated units colocated with SWMU's where both types of units have released to the environment..	63 FR 56710, 10/22/98 .....	645(1)(e), 645(1)(e)(i), 645(1)(e)(ii); 610(1)(d), 610(1)(d)(i), 610(1)(d)(ii); 610(3)(a)(ix), 610(3)(b)(ii)(D); 610(8)(b)(iv), 610(8)(d)(ii)(D); 620(1)(d), 620(1)(d)(i), 620(1)(d)(ii); 400(3)(a).
175 <sup>2</sup> .....	HWIR-Media .....	63 FR 65874, 11/30/98 .....	040; 071(3)(11) first line, 071(3)(11)(i) through (iii); 280(5); 280(6), 280(6)(a), 280(6)(b), 280(6)(c), 280(6)(d), 280(6)(e), 280(6)(f), 280(6)(g), 280(6)(h), 280(6)(i), 280(6)(j), 280(6)(k); 646(1)(c); 646(4)(a), 646(7)(a), 646(8); 400(2)(a); 140(2)(a); 810(13)(a); 830 Appendix 1, D.3.g.; 830, Appendix 1, N.3.
176 .....	Universal Waste Rule—Technical Amendments.	63 FR 71225, 12/24/98 .....	520(1), 520(2), 520(2)(a), 520(2)(b), 520(2)(c); 040.
177 .....	Organic Air Emission Standards Clarification and Technical Amendments: (AA, BB, CC).	64 FR 3382, 01/21/99 .....	200(1)(b)(i), 200(1)(b)(ii); 690(2); 692(1)(v), 692(2); 400(3), 400(3)(a).
178 .....	Petroleum Refining Process Wastes—Leachate Exemption.	64 FR 6806, 02/11/99 .....	071(3)(kk), 071(3)(kk)(i), 071(3)(kk)(ii), 071(3)(kk)(iii), 071(3)(kk)(vi), 071(3)(kk)(v).
179 <sup>2</sup> .....	Land Disposal Phase IV—Technical Corrections and Clarifications to Treatment Standards.	64 FR 25408, 05/11/99 .....	016(5)(c); 016 Table 1; 017(2)(a)(iii); 201(2); 140(2)(a).
180 .....	Test Procedures for Analysis of Oil and Grease and Non—Polar Material.	64 FR 26315, 05/14/99 .....	110(3)(a), 110(3)(h)(iv).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS <sup>1</sup>—Continued

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
181 <sup>2</sup> .....	Universal Waste Rule Specific Provisions for Hazardous Waste Lamps.	64 FR 36466, 07/09/99 .....	040; 077(2), 077(3); 600(3)(o)(ii), 600(3)(o)(iii); 400(2)(c)(xi)(B), 400(2)(c)(xi)(C); 140(2)(a); 800(7)(c)(iii)(B), 800(7)(c)(iii)(C); 573(1)(a)(ii), 573(1)(a)(iii); 573(2)(a)(i), 573(2)(b)(ii), 573(2)(b)(iii), 573(3)(a); 573(5)(a), 573(5)(b), 573(5)(b)(i), 573(5)(b)(ii), 573(5)(c), 573(5)(c)(i), 573(5)(c)(ii), 573(4)(a), 573(4)(a)(i), 573(4)(a)(ii), 573(4)(b), 573(6), 573(9)(c), 573(9)(c)(i), 573(9)(c)(ii), 573(9)(c)(iii), 573(10)(c), 573(17), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(c), 573(20)(c)(i), 573(20)(c)(ii), 573(20)(c)(iii), 573(21)(c), 573(28), 573(35)(a), 573(40)(a).
112, 122, 130, 166 (Special Consolidated Checklist <sup>2</sup> ).	Recycled Used Oil Management Standards as of June 30, 1999.	57 FR 41566, 09/10/92; 58 FR 26420, 05/03/93; 58 FR 33341, 06/17/93; 59 FR 10550, 03/04/94; 63 FR 24963, 05/06/98; 63 FR 37780, 07/14/98.	040; 515(4); 071(3)(z), 071(3)(kk); 120(3); 120(3)(g), 120(3)(f); 120(2)(v), 120(2)(a)(viii)(A), 120(2)(a)(viii)(B), 120(2)(a)(viii)(C), 120(5); 600(5); 510(1)(b)(i); 515(2), 515(3), 515(4), 515(5), 515(6), 515(6)(c), 515(7), 515(8), 515(9), 515(9)(a), 515(9)(b), 515(10), 515(11), 515(12).

<sup>1</sup> For further discussion on where the revised state rules differ from the Federal rules refer to section G. below, the authorization revision application, and the administrative record for this decision.

<sup>2</sup> State rule contains some more stringent provisions. For identification of more stringent state provisions refer to the authorization revision application and the administrative record for this decision.

<sup>3</sup> State does not seek authorization for enforceable documents in lieu of post-closure permits.

<sup>4</sup> Checklist generally reflect changes made to the Federal regulations pursuant to a particular FEDERAL REGISTER notice and EPA publishes these checklists as aids for states to use for the development of their authorization application. (See EPA's RCRA State Authorization web page at <http://www.epa.gov/epaoswer/hazwaste/state/rcra/>.)

#### F. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses some of the differences between the revisions Washington requested authorization for and those which are part of this final authorization decision. Not all program differences are discussed in this section because Washington writes its own version of the federal hazardous waste rules. This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized; it discusses rules where the State program is broader in scope and can not be authorized; and rules where the State program is less stringent than the federal requirements and will not be authorized. The State program will not be authorized for the less stringent or broader in scope rules. Less stringent State rules do not supplant federal regulations. Persons must consult the Table 1 for the specific State regulations which EPA is authorizing in today's final rule.

Certain portions of the federal program are not delegable to the states because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. EPA does not delegate import/export functions. Under the RCRA regulations found in 40 CFR part 262 EPA will continue to implement requirements for import/export functions. EPA does not delegate sections of 40 CFR part 268 because of the national concerns that must be examined when decisions are made

under the following Federal Land Disposal Restriction requirements: 40 CFR 268.5—Procedures for case-by-case effective date extensions; 40 CFR 268.6—“No migration” petitions; 40 CFR 268.42(b)—applications for alternate treatment methods; and 40 CFR 268.44(a)–(g)—general treatment standard variances. Washington's program has excluded these requirements from its state regulations and EPA will continue to implement these requirements under EPA's HSWA authority. The State requested authorization for 40 CFR 268.44(h) through (m), which are provisions for which states may receive authorization and are part of this authorization decision.

States are allowed to seek authorization for state requirements that are more stringent than federal requirements. EPA has authority to authorize and enforce those parts of a state's program EPA finds to be more stringent than the federal program. This section does not discuss each more stringent finding made by EPA, but persons can locate such sections by consulting Table 1, referenced above, as well as by reviewing the docket for this rule. The State program is authorized for each more stringent requirement as a part of this rulemaking.

The State program does not provide generators with an exemption from the manifest requirements as found in the federal regulations at 40 CFR 262.20(f) or transporters as found at 40 CFR 263.10(f). Generators and transporters in

Washington will have to comply with the more stringent state paperwork requirements. The State program is more stringent than the federal program because the State regulations do not allow Remedial Action Plans as found in the federal requirements at 40 CFR part 270, subpart H. The State's program is more stringent than the federal program at 40 CFR 261.5(j) because the State has not adopted this provision. Conditionally exempt small quantity generator hazardous waste mixed with used oil is subject to full regulation as a hazardous waste mixture. The State program is also more stringent than the federal requirements at 40 CFR 273.9 because the State's definition of universal waste does not allow pesticides to be managed as universal waste.

The State program is more stringent in certain places than the federal military munitions rule. The State did not adopt the alternative requirements for transportation of waste military munitions between military installations as is found in the federal program at 40 CFR 266.203(a)–(c) and is therefore more stringent than the federal program. With respect to chemical agents and chemical munitions slated for destruction pursuant to international treaties or agreements, the State identifies such chemical agents and chemical munitions as characteristic and/or listed hazardous waste. In the Military Munitions Rule, at 62 FR 6633, EPA said that states could be more stringent than the federal program for

chemical munitions. EPA finds the State program to be more stringent than the federal program in this area because the State rules do not contain a provision that differentiates between wastes that must be designated and waste chemical munitions or chemical munitions that are not considered wastes because they are scheduled for destruction pursuant to treaty or agreement. The State's regulations at WAC 173-303-693(3)(a) are found to be more stringent than the federal regulation at 40 CFR 264.1202(a) and WAC 173-303-400(3)(b), (c)(xii) is found to be more stringent than the federal regulation at 40 CFR 265.1202(a). EPA also said, at 62 FR 6649 in the Military Munitions Rule, that states did not have to include a conditional exemption for waste munitions storage in their programs. EPA also finds that the State's lack of a conditional exemption for waste munition storage, which is found in the federal regulations at 40 CFR 266.205(d), (d)(2), is more stringent than the federal program. Neither the federal regulations, nor the State program conditionally exempt chemical munitions and chemical agents from storage requirements.

The State did not seek authorization for the Standards for the Management of Waste Fuel and Used Oil for the Burning of these Materials in Boilers and Industrial Furnaces, 40 CFR 266.102 through 40 CFR 266.111. The State did not adopt these federal provisions as state law. EPA is implementing these BIF requirements in Washington State under EPA's HSWA authority. States are not allowed to seek authorization for state requirements that are broader in scope than federal requirements. EPA does not have authority to authorize and enforce those parts of a state's program EPA finds to be broader in scope than the federal program. Because the State has not adopted an analog to 40 CFR 261.4(b)(7)—exclusions for solid waste from the extraction, beneficiation, and processing of ores and minerals, the State's lack of an analog for the federal exclusion of mixtures of solid waste and hazardous waste which are hazardous based solely on a hazardous characteristic imparted to the waste as a result of a Bevill characteristic, 40 CFR 261.3(a)(2)(iii), is broader in scope than the federal program. EPA also finds the State's regulation at WAC 173-303-578(2)(e) to be broader in scope than the federal regulation at 40 CFR 266.202(a) because the State added a requirement for when munitions at closed and transferred ranges are considered solid wastes. EPA's final Military Munitions

Rule did not include this requirement. This requirement in the State program is found to be broader in scope than the federal program.

Although State programs can be authorized where they are more stringent than the federal program, state programs cannot be authorized where they are less stringent. EPA finds the State's additional regulation at WAC 173-303-515(6) for generators of used oil who self-transport greater than 55 gallons per vehicle trip to a used oil collection center, without also designating as a used oil transporter, are less stringent than the federal provisions which limit generator self-transport of used oil to less than or equal to 55 gallons of used oil per vehicle trip. EPA also finds the State's additional regulation at WAC 171-303-515(7) for used oil collection centers to be less stringent because the regulation allows used oil collection centers to accept greater than 55 gallons of used oil from a generator who self-transported used oil to a used oil collection center. The direct impact of EPA's finding to generators and used oil collection centers in Washington is that generators and used oil collection centers will not be exempted from the State's federally authorized requirements which limit self-transport by generators to less than or equal to 55 gallons and used oil collection from a self-transporting generator to less than or equal to 55 gallons.

States sometimes make changes to their previously authorized programs for which they need to seek reauthorization. In Washington, the Permit by Rule provision at WAC 173-303-802(5) is broader in scope than the federal permit by rule regulations where it applies to state-only wastes. However, the State program is more stringent where the rule applies to federally regulated hazardous wastes generated on-site. The federal regulations at 40 CFR 270.1(c)(2)(iv) and (v) exempt owners and operators of totally enclosed treatment facilities, elementary neutralization units or wastewater treatment units, as defined at 40 CFR 260.10, from RCRA permitting requirements. The State requested reauthorization for these changes and EPA has determined that the more stringent portion of the rule is authorized and the broader in scope provision will not be authorized in this rulemaking.

The State did not seek authorization for the entire Post-Closure rule. While the State will be authorized for the portions of the rule that concern alternative requirements for co-located regulated units and solid waste

management units which have commingled releases, the State did not seek, nor will the State be authorized for the portions of the rule that allow for the use of enforceable documents in lieu of post closure permits. Although the State did incorporate 40 CFR 265.118(c)(4) by reference into its regulations, the State did not seek authorization for this provision and will not be authorized for it.

#### **G. Who Handles Permits After This Authorization Takes Effect?**

Washington will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit. EPA will continue to issue permits for HSWA requirements for which Washington is not yet authorized.

#### **H. What Is Codification and Is EPA Codifying Washington's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State's authorized rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of Washington's program at a later date.

#### **I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Washington?**

EPA's decision to authorize the Washington hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the "1873 Survey Area" or "Survey Area") located in Tacoma, Washington. EPA retains jurisdiction over "Indian Country" as defined in 18 U.S.C. 1151.

#### **J. Administrative Requirements**

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to

review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another

standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 2, 2002.

**Ronald A. Kreizenbeck,**  
Deputy Regional Administrator, Region 10.  
[FR Doc. 02-8533 Filed 4-10-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[OPPTS-50606A; FRL-6805-1]

RIN 2070-AB27

### Significant New Uses of Certain Chemical Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for six chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action

requires persons who manufacture, import, or process these substances to notify EPA at least 90 days before commencing the manufacturing or processing of a substance for a use designated by these rules as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment.

**DATES:** This final rule is effective on May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-8974; e-mail address: alwood.jim@epa.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action